

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1443 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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JAYESHBHAI J PATEL

Versus

GSRTC

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Appearance:

MR JA ADESHRA for Petitioner

MR KS JHAVERI for Respondent

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CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE M.H.KADRI

Date of decision: 12/03/97

ORAL JUDGEMENT

Admit. Service is waived by learned advocate Mr. Jhavari for the respondent. Upon joint request, the matter is taken up for final hearing today itself.

The appellant is the original injured claimant who has been awarded an amount of Rs. 47,825/- by way of compensation with running interest at the rate of 15% from the date of filing of the Motor Accident Claim Petition No. 257 of 1988 till date of payment, by an award dated 11.1.1996 by the MACT No. IV at Ahmedabad. The break-up of the amount of compensation is enumerated in para 12 of the award.

The Tribunal has awarded an amount of Rs. 15,000/towards discomfort of life. It is rightly jointly submitted that by this amount, the Tribunal intended to award the amount towards head of future economic loss. The injured has sustained permanent partial disablement who was aged 26 years at the relevant time, working as a junior clerk in the Ahmedabad Municipal Corporation. The disablement percentage in light of the evidence is assessed at 65% by the Tribunal. The amount awarded under the intended head of future economic loss of Rs. 15,000/- is obviously and apparently grossly inadequate. The tribunal has discussed in para 9 of the award that the claimant was earning an amount of Rs. 1,365/- per month. The salary certificate is also produced at Exh. 21. However, prospective income issue is also not properly taken into consideration.

Even if the income which the claimant was earning per month at the relevant time is considered, then also, in light of the facts and circumstances and the medical evidence, the injured claimant would suffer economic loss to the extent of Rs. 350/- per month. Bodily integrity of the claimant is shattered rendering him incapable to the extent and in part. This incapacity and impairment of body is to be examined so as to award just and reasonable amount of compensation under the head of future economic loss. Even while taking a conservative view of the matter, the appellant is likely to suffer economic loss to the extent of Rs. 350/- per month. Thus, annual loss would work out at Rs.  $350 \times 12 = 4250$ . 15 multiplier will be appropriate looking to the young age of the claimant. The claimant, therefore, will be entitled to Rs.  $4200 \times 15 = 63,000/-$ . The Tribunal, as jointly contended, intended to award Rs. 15,000/- under the head of future economic loss. Therefore, the claimant would be entitled to additional amount of Rs  $63,000 - 15,000 = 48,000/-$  under the head of prospective economic loss for permanent disablement sustained by him. Obviously, this amount is additional amount over and above the amount awarded by the Tribunal with proportionate interest at the same rate and proportionate cost.

We may also clarify one aspect which has necessarily been borne out from the final order in the award. The Tribunal has allowed the petition and while allowing the petition in part, it has held that the opponent is liable to the extent of 90%. However, the respondent-original opponent is also directed to pay full amount as awarded by the Tribunal by way of compensation with interest and cost. It appears that the Tribunal lost sight of fact that this is a fit case of composite negligence and not contributory negligence. So, what is assessed and examined is extent of the role of the respective drivers of bus and the scooter in the happening of the unfortunate road accident. The claimant admittedly was a pillion rider travelling on the scooter at the time of the accident.

In view of the aforesaid facts and circumstances, the claimant is entitled to the additional amount of Rs. 48,000/- with proportionate cost and interest at the rate of 15% per annum from the date of application till payment. However, if the payment is made in the tribunal within a period of three months from today, then the interest rate will be 12% as awarded in the impugned award. The additional amount awarded shall be over and above the amount of Rs. 47,825/- awarded by the Tribunal as per the impugned award. The additional amount of Rs. 48,000/- with interest, but except cost, shall be deposited in a nationalised bank or any other high rate yielding interest scheme of the choice of the appellant-claimant in any bank or Corporation of Government of India or State Government, for a minimum period of five years. The other terms and conditions with regard to loan incorporated in the award shall apply equally to the additional amount. The amount of interest which shall accrue due therefrom periodically shall be paid to the claimant.

In view of the aforesaid facts and circumstances, the appeal is allowed to the aforesaid extent and the impugned award shall stand modified accordingly. There shall be no order as to costs of the appeals.

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